



UNIVERSITY OF  
**TORONTO**  
FACULTY OF LAW




# ADMINISTRATIVE LAW

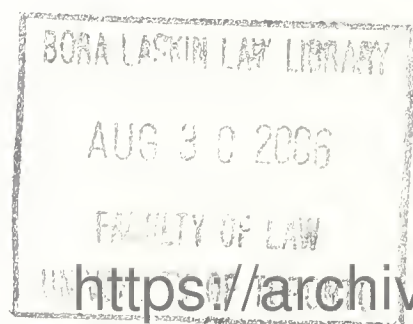
FALL 2006

Volume 2

Prof. Andrew Green



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ADMINISTRATIVE LAW

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# **ADMINISTRATIVE LAW FALL SEMESTER 2006**

**Professor Andrew Green**

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**Class Meetings:**     **Mondays and Wednesdays, 10:10 AM-12PM, FLB**

## **Overview**

This course is an introductory course examining administrative law - which covers the legal regulation and judicial supervision over the executive branch of government. The courts have developed a distinctive jurisprudence governing the manner in which government officials carry out their statutory mandates and exercise discretion under those statutes. This body of law is of general application to the judicial review of the actions of government officials and thus is relevant and important to many other substantive areas of law, including labour law, immigration law, constitutional law, environmental law, banking and securities law and many others.

## **Texts**

The text required for this course is D. Mullan, *Administrative Law: Cases, Text and Materials* (5<sup>th</sup> Ed.) (Toronto: Emond Montgomery, 2003) and Green, *Administrative Law, Fall 2006 Supplemental Materials*.

## **Recommended Reading**

For those seeking additional readings, the following sources are recommended:

- Brown and Evans, *Judicial Review of Administrative Action* (Brown & Evans, 1998) (Canada) (Looseleaf ed.)
- D. Mullan, *Administrative Law* (Toronto: Irwin, 2001)
- MaCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)
- Blake, *Administrative Law in Canada*, (3rd ed. Butterworths, 2001) (Canada)
- Bryant & Sossin, *Public Law* (Toronto: Carswell, 2002)
- Davis & Pierce, *Administrative Law Treatise* (3rd ed. Little Brown 1994) (U.S.)

## Evaluation

There will be a final, open-book examination of 3 hours duration. Students may also elect to write a paper on a topic submitted to and approved by me before the end of the first week of November 2006. This will be an *additional* form of evaluation and will constitute 50% of a student's grade - the other 50% of the grade will be based on the grade in the final examination. Papers should be 18-20 double-spaced pages. This is a "no-downside" option, so that if a student receives a grade on the paper less than that student receives on the exam, it will not count towards the student's final grade.

## Course Outline

All page references are to D. Mullan, *Administrative Law: Cases, Text and Materials (5<sup>th</sup>)* (AL) or to the 2006 Supplemental Materials (SP).

### Part I: Introduction

This will offer an introduction to the functions and institutions of government in Canada, and emphasize the constitutional, statutory and common law separation of powers between the judicial, legislative and executive branch. With respect to the executive branch, we will explore the growth of administrative agencies, boards, commissions, tribunals and other government decision-makers that make up the administrative state.

*Reading:*

"The Administrative State and the Rule of Law", AL pp. 3-35; *Baker v. Canada (Minister of Citizenship & Immigration)* AL p. 57-87.

### Part II: Administrative Procedures and the Duty of Fairness

#### (i) Introduction

The purpose and legal sources of administrative procedures; historical overview; the roles of legislatures, agencies and courts in designing procedures.

*Reading:*

#### (ii) Duty of Fairness

##### (a) historical overview

*Reading:* AL pp. 99-103; *Cooper v. Board of Works for Wandsworth District*, AL pp. 104-6.

- (b) the emergence and elaboration of the duty of fairness: *Nicholson & Knight Reading*: Mullan, *Administrative Law* (2001), SP1 p. 1; *Nicholson*, AL pp. 107-16; *Knight*, AL pp. 116-31.
- (c) limitations on the scope of the duty: legislative and policy decisions  
*Reading*: *Inuit Tapirisat*, AL pp. 132-40; *Homex Realty*, AL pp. 140-44; *Authorson v. Canada*, SP1 p. 9; *Wells v. Newfoundland*, SP1 p. 21; *East York v. Ontario*, SP1 p. 36.
- (d) interests protected by the duty of fairness  
*Reading*: *Re Webb and Ontario Housing Corporation*, AL pp.152-7; *Hutfield v. Board of Fort Saskatchewan General Hospital, District No.98*, AL pp. 158-63.
- (e) administrative action that is non-final: recommendations and decisions to prosecute  
AL pp. 164-6; *Re Abel and Advisory Review Board*, AL pp. 168-72.
- (f) legitimate expectations  
*Reading*: Mullan, *Administrative Law* (2001), SP1 p. 41; *CUPE v. Ontario (MOL)* SP1 p. 47.

**(iii) Constitutional Thresholds: Section 2(e) of the *Bill of Rights* & Section 7 of the *Charter***

- (a) *Reading*: Mullan, *Administrative Law* (2001), SP1 p. 95; *Singh v. Canada (Minister of Employment and Immigration)*, AL p. 215-229; *Blencoe v. B.C. (Human Rights Commission)*, AL p. 246-257.

**(iv) The Content of Procedural Fairness**

- (a) introduction and analytical framework  
*Reading*: Mullan, *Administrative Law* (2001), SP1 p. 109; *Baker v. Canada (Minister of Citizenship & Immigration)*, AL p.57-72; *Suresh v. Canada (Minister of Citizenship & Immigration)*, AL p. 298-301; *Ahani v. Canada (Minister of Citizenship & Immigration)* SP1 p. 112.
- (b) sources of law  
*Reading*: Mullan, *Administrative Law* (2001), SP1 p. 119; *Amended SPPA*, SP1 p. 125. *Thamotharem v. Canada (Minister of Citizenship & Immigration)*, SP 150; *Henderson v. College of Physicians & Surgeons (Ontario)*, SP 1 p.188.
- (c) delay  
*Blencoe v. B.C. (Human Rights Commission)* AL p. 246, 257-275

- (d) oral hearings  
Reading: Mullan, *Administrative Law* (2001), SP1 p. 198; *Khan v. University of Ottawa*, AL p. 372; *Xwave Solutions Inc. v. Canada (Public Works & Government Services)*, SP1 p.208
- (e) the right to counsel  
Reading: Mullan, *Administrative Law* (2001), SP1 p. 217; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, SP1 p. 219.
- (f) disclosure  
Reading: Mullan, *Administrative Law* (2001), SP1 p. 251; *Pritchard v. Ontario (Human Rights Commission)*, SP1 p. 255; *Haghighi v. Canada (Minister of Citizenship and Immigration)*, SP1 p. 264; *Sheriff v. Canada (Attorney General)*, SP 1 p.277
- (g) evidence and cross-examination  
Reading: Mullan, *Administrative Law* (2001), SP1 p. 288; *Armstrong v. Royal Canadian Mounted Police Commissioner*, SP 1 p.291 .
- (h) the duty to provide reasons for decisions  
Reading: Mullan, *Administrative Law* (2001), SP1 p. 302; *Baker* AL, p.70-72; *Liang v. Canada (Minister of Citizenship & Immigration)*, SP1 p. 309; *Gray v. Ontario (DSP)*, SP1 p. 316; *R. v. Sheppard*, SP1 p. 333.
- (i) the relevance of international human rights norms and procedural requirements  
Reading: *Baker* AL, p.79-80; *Ahani v. Canada (OCA)*, SP1 p. 336;

**(v) Bias & Independence**

- (a) impartiality and independence  
Reading: Mullan, *Administrative Law* (2001), SP1 p. 370; 2747-3174 *Quebec Inc. v. Quebec (Régie des permis d'alcool)*, AL p. 612-618 ; *Ellis Don v. Ontario (Labour Relations Board)*, AL p. 539; *Newfoundland Telephone Comp. v. Newfoundland (Board of Utility Commissioners)*, AL p. 642 ; *Imperial Oil v. Quebec (Minister of the Environment)*, SP1 p. 385; *Bell v. Canadian Telephone Employees Association*, SP1 p. 402; *Canadian Pacific Ltd. v. Matsqui*, AL p. 662; *Ocean Port v. B.C.*, SP1 p. 416; *Gale v. Miracle Food Mart*, SP1 p. 428; M. Jimenez, "Refugee Approval Rates Vary Widely" SP1 p. 453; L. Sossin, "From Neutrality to Compassion: The Place of Civil Service Values and Legal Norms in the Exercise of Administrative Discretion" SP1 p. 434.



### Part III: Standard of Review

#### (i) Introduction

*Reading:* AL pp. 697-700, 700-707, 714-723; *Law Society of New Brunswick v. Ryan*, SP2 p. 1-14 ; *CUPE v. City of Toronto* (Lebel J. concurring), SP2 p. 15-38

#### (ii) The Pragmatic and Functional Approach

##### Introduction

*Reading:* *Dr. Q. v. College of Physicians and Surgeons of BC*, SP2 p. 39-49.

##### (a) the standard of patent unreasonableness

*Reading:* *National Corngrowers v. Canada*; *CUPE, Local 301 v. City of Montreal*, *Domtar v. Quebec*, *City of Toronto v. OSSTF*, AL pp. 867-914

##### (b) the standard of review: correctness

*Reading:* *Canada v. Mossop*, AL pp. 825-841, *Pushpanathan v. Canada (Min. Of Citizenship & Immigration)*, SP2 pp. 50-76, *Trinity Western College v. B.C. College of Teachers*, AL pp. 801-812.

##### (c) the standard of reasonableness *simpliciter*

*Reading:*, *Canada (Dir. of Investigation and Research) v. Southam Inc.*, AL pp. 769-779, 860-867, *Barrie v. CTEA*, SP2 pp. 95-98, 109-125; *Chamberlain v. Surrey School District No. 36*, SP2 p. 126-152; *Singh-Multani c. Marguerite-Bourgeoys (Commission scolaire)*, SP2 p. 153.

##### (d) the *ultra vires* principle

*Reading:* *Sheehan v. Criminal Injuries Compensation Board*, AL pp. 960-968; *Shell v. Vancouver (City)*, AL pp. 968-982; *Baker*, AL pp. 74-83; *Nanaimo (City) v. Rascal Trucking Ltd.*, SP 2 p. 182; *CUPE v. (Ontario) MOL*, SP1 pp. 47-51, 72-75; *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, SP 2 p.193.

##### (e) The new statutory approach

*Reading:* *BC Administrative Tribunals Act, 2004*, SP2 pp. 227.



#### **Part IV: Rulemaking and Regulatory Dilemmas**

- (a) regulations  
*Reading: AL, 675-696, Thorne's Hardware v. Canada, AL pp. 1009-1010; M. Taggart, "From 'Parliamentary Power' to Privatization: The Chequered History of Delegated Legislation in the Twentieth Century" SP2 p. 253; Enbridge v. Ontario Energy Board, SP2 p. 271; Environmental Commissioner of Ontario, 2004 – 2005 Annual Report, SP2 p. 292*
- (b) soft law  
*Reading: Mullan, "Administrative Law", SP2 p. 300; L. Sossin, "The Rule of Policy: Baker and the Impact of Judicial Review of Administrative Discretion" SP2 pp. 305*

#### **Part V: Jurisdiction, Justiciability and Standing**

- (a) a tribunal's authority to decide constitutional questions and overlapping jurisdiction  
*Reading: Cooper v. Canada (Human Rights Commission), Weber v. Ontario Hydro AL pp. 915-946; In Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General) ("Morin"), SP2 pp. 319; Quebec (Attorney General v. Quebec (Human Rights Tribunal) ("Charette") SP2 pp. 323; Canada (House of Commons) v. Vaid, SP2 pp. 326; L. Jacobs, "Developments in Administrative Law: the 2004-2005 Term" (TWEN); Paul v. B.C (Forest Appeals Commission) SP2 p. 330; Nova Scotia (Worker's Compensation Board) v. Martin, SP2 pp. 333; Werbeski v. Ontario (Director of Disability Support Program, Ministry of Community & Social Services), SP2 p.371.*
- (b) standing  
*Reading: AL pp. 1189-1225, Harris v. Canada, AL p. 1220; Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner) (trial decision), SP2 p. 394; Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner) (OCA), SP 2 p.401.*
- (c) justiciability  
*Reading: L. Sossin, The Law of Justiciability in Canada (Carswell, 1999), SP2 p.415.*
- (d) doctrine of exhaustion and collateral attacks  
*Reading: AL pp. 465-70; R. v. Consolidated Maybrun Mines Ltd., AL pp. 1303-1309; Danyluk v. Ainsworth Technologies Inc. SP2 p. 429.*

**Part VI: New Approaches, New Frontiers of Administrative Law****Recommended**

Mullan and Ceddia, “Globalization, Democracy and Domestic Law: The Impact on Public Law of Privatization, Outsourcing and Downsizing – A Canadian Perspective”, SP2 p. 451.

Sossin, “Boldly Going Where No Law Has Gone Before: Call Centres, Intake Scripts, Database Fields and Discretionary Justice in Social Welfare”, SP2 p. 471.

*Haida Nation v. British Columbia (Minister of Forests)*, SP2 p. 523.

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